IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 75 OF 2005

M/s. Sadashiv Morajkar
Construction Pvt. Ltd., a private
limited company incorporated and
constituted under Companies
Act, 1956, having its Office at 2C,
2nd Floor, Shantadurga Apartment,
Behind Poshak Morod, Mapusa,
Goa. ... Petitioner

Versus

1. Government of Goa,
through Secretary,
PWD, Office of the Secretary,
PWD, Government of Goa,
Secretariat, Panaji, Goa,

2. Chief Engineer -II, P.W.D.,
Office of Chief Engineer- II,
P.W.D., PWD Building,
Altinho, Panaji, Goa,

3. Superintending Engineer,
Circle III, Office of the
Superintending Engineer,
Circle III, PWD Building,
Altinho, Panaji, Goa.

4. The Executive Engineer,
Works Division XIII (R),
PWD, Office of the
Executive Engineer, Works
Division XIII, PWD,
Mapusa, Goa, and

5. M/s Assmass Constructions Pvt.
Ltd., a privat limited company,
incorporated and constituted
under Companies Act, 1956,

1956, having office at
A-4, S-2, Madkaikar Plaza,
2ndFloor, Molar, Corlim, Goa. ... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, advocate for the petitioner.

Mr. M. B. D'Costa, Advocate General with Mr. J.A. Lobo, Additional Government Advocate for respondent nos. 1 to 4.

Mr. S. G. Bhobe for respondent no. 5.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 19th April, 2005.

ORAL JUDGMENT (Per Lavande, J.)

Rule. Learned counsel for the respondents waive notice. By consent heard forthwith.

2. Heard Mr. S. G. Dessai, learned Senior Counsel with Mr. Shivan Dessai, for the petitioner, Mr. M. B. Da Costa, learned Advocate General with Mr. J. A. Lobo, learned Additional Government Advocate for respondent nos.1 to 4 and Mr. Bhobe, learned advocate for respondent no.5.

3. The petitioner has filed the present petition challenging the decision of respondent nos. 1 to 4 not to open the tender submitted by the petitioner as well as the decision to award tender to the

respondent no.5. Respondent no. 4 invited tenders on behalf of the Governor of Goa, for the work of improvement and providing hot mix carpet to various roads in Village Panchayat Verla, Canca in a length of 8.10 kms. in Siolim Constituency. The estimated cost of the tender was Rs.97,38,536/- with an Earnest Money Deposit (EMD) of Rs.l,00,000/- . The tenders had to be submitted in a sealed cover and Condition no.8 required that the EMD amounting to Rs.1,00,000/- (unless exempted) would be accepted in the form of a Demand Draft or a Deposit at Call Receipt (DCR) of a Scheduled Bank guaranteed by the Reserve Bank of India, payable at Mapusa, Goa, and the same was to accompany each tender. The last date for receiving the tender which was initially fixed on 18th January, 2005, was extended to 25th January, 2005. The petitioner submitted his tender on 25th January, 2005 in the prescribed form alongwith the EMD of Rs.l,00,000/- by Demand Draft payable at Panaji, Goa, instead of Mapusa, Goa, as the concerned Bank had a branch in Panaji only and had no branch in Mapusa, Goa. The tender submitted by the petitioner was not opened by respondent no.4 on the ground that the Demand Draft submitted by the petitioner was not payable at Mapusa, Goa, in terms of Condition no.8 of the tender notice.

4. By this petition, the petitioner has challenged the decision of the respondent nos.1 to 4 not to open the tender of the

petitioner on the ground that the Demand Draft submitted by the petitioner was payable at Panaji, Goa and not at Mapusa, Goa.

5. The petition was filed on 11nd February, 2005. After filing of the petition, the Work Order was issued to respondent no.5 to whom the tender was awarded. On 16th February, 2005, it was represented by the learned Advocate General appearing on behalf of respondent no.5 that the Work Order was already issued to respondent no.5, but the actual work had not been started. Respondent no.5 was, therefore, directed not to start the work until further orders.

6. Mr. M. B. D'Costa, learned Advocate General appearing on behalf of respondent no.1 to 4, upon taking instructions, has submitted that the respondent nos.1 to 4 will open the tender of the petitioner on Monday, 25th April, 2005, and in the event the petitioner is awarded the tender, the petitioner be directed to pay collection charges in respect of the Demand Draft submitted by the petitioner. Mr. S. G. Dessai, learned Senior Counsel on behalf of the petitioner, has stated that the petitioner has been and is ready and willing to pay the collection charges within the time fixed by this Court, in the event the tender is awarded to the petitioner. Mr. Bhobe, learned counsel appearing for the respondent no.5 submitted that his client will abide by the decision

taken by the Government.

7. In view of the statement made by the learned Advocate General we direct respondent nos.1 to 4 to open the tender submitted by the petitioner on Monday, 25th April, 2005, and after considering the same on merits, take appropriate decision. In the event the tender is awarded to the petitioner, the petitioner shall pay the collection charges fixed by respondent nos.1 to 4, within three days from the date the petitioner is called upon to pay the collection charges. Consequently, the decision of of respondent nos.1 to 4 to award the tender as well as the Work Order issued to respondent no.5 dated 14th February, 2005 are quashed and set aside.

8. Rule is made absolute in the aforesaid terms. Having regard to the facts and circumstances of the case, we direct the parties to bear their own costs.

A. P. LAVANDE,J.

N. A. BRITTO, J.

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